

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #16	CCRB Case #: 202103105	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/19/2021 3:48 PM, Friday, 02/19/2021 3:48 PM, Friday, 02/19/2021 3:48 PM, Friday, 02/19/2021 3:48 PM, Friday, 02/19/2021 3:48 PM,	Location of Incident: § 87(2)(b) [REDACTED] § 87(2)(b)	18 Mo. SOL 8/19/2022	Precinct: 71		
Date/Time CV Reported Fri, 05/21/2021 4:45 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 05/21/2021 4:45 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. PO Adam Elmaadawy	10563	956618	071 PCT
2. PO Thomas Owens	08023	961051	CCCS DLU
3. SGT Charles Arnone	00408	950021	INT FIO PRG
4. PO Michael Haber	11401	955967	CCCS
5. LT Daniel Guida	00000	941862	061 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Christophe Mcguinness	02777	940452	071 DET
2. SGT Edwin Simon	05338	937543	071 DET
3. DT3 Sean Mckinnon	2259	943553	013 DET
4. SGT John Pietanza	00965	943682	013 DET
5. PO Alan Litvin	12724	966170	LEG BUR
6. PO Veronica Martino	07498	960894	070 PCT
7. SGT Michael Rosario	03098	951178	060 PCT
8. PO Brett Scrivanich	18807	962093	060 PCT
9. PO Michael Hughes	08346	960691	071 PCT
10. PO Antonious Michael	11215	960942	071 PCT
11. DT3 Clifford Scanlon	02893	961253	INT FIO PRG
12. DT3 Triston Trunk	03628	958131	INT FIO PRG
13. PO Robert Aviles	08502	948633	RTCC
14. PO Jonathan Landro	13790	966154	RTCC
15. LT Nathan Yakubov	00000	940874	071 PCT
16. PO Roger Delfosse	14900	955863	071 PCT
17. PO Tiffany Inniss	11166	960708	071 PCT
18. PO Anton Baird	08458	956407	071 PCT
19. PO Craig Smith	07105	956272	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
20. CPT Michael Goodchild	00000	936686	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.PO Michael Haber	Abuse: Police Officer Michael Haber damaged an individual's property.	
B.PO Michael Haber	Abuse: Police Officer Michael Haber entered § 87(2)(b) in Brooklyn.	
C.PO Adam Elmaadawy	Abuse: Police Officer Adam Elmaadawy entered § 87(2)(b) in Brooklyn.	
D.PO Thomas Owens	Abuse: Police Officer Thomas Owens entered § 87(2)(b) in Brooklyn.	
E.PO Michael Haber	Abuse: Police Officer Michael Haber searched § 87(2)(b) in Brooklyn.	
F.PO Adam Elmaadawy	Abuse: Police Officer Adam Elmaadawy searched § 87(2)(b) in Brooklyn.	
G.PO Thomas Owens	Abuse: Police Officer Thomas Owens searched § 87(2)(b) in Brooklyn.	
H.PO Adam Elmaadawy	Abuse: Police Officer Adam Elmaadawy damaged an individual's property.	
I.SGT Charles Arnone	Abuse: Sergeant Charles Arnone entered § 87(2)(b) in Brooklyn.	
J.SGT Charles Arnone	Abuse: Sergeant Charles Arnone searched § 87(2)(b) in Brooklyn.	
K.PO Michael Haber	Abuse: Police Officer Michael Haber seized § 87(2)(b) property.	
L.LT Daniel Guida	Abuse: Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.	
M.LT Daniel Guida	Abuse: Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.	
N.LT Daniel Guida	Abuse: Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.	
O.LT Daniel Guida	Abuse: Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.	
P.LT Daniel Guida	Abuse: Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.	
Q.LT Daniel Guida	Abuse: Lieutenant Daniel Guida searched § 87(2)(b) in Brooklyn.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 21, 2021, § 87(2)(b) filed this complaint on the CCRB website.

On February 19, 2021, at approximately 3:48 PM, § 87(2)(b) parked his vehicle in front of Camille's restaurant located at 711 Flatbush Avenue in Brooklyn and left the keys inside the vehicle while he unloaded items into the restaurant. When he came out of the restaurant, he saw that his vehicle was stolen and called 911. Police Officer Michael Haber, Police Officer Adam Elmaadawy, and Police Officer Thomas Owens, all of the 71st precinct, responded to the location and spoke to § 87(2)(b). He told the officers that § 87(2)(b) stole his vehicle and lived at § 87(2)(b) down the block. PO Haber, PO Elmaadawy, PO Owens, and § 87(2)(b) walked to § 87(2)(b) for § 87(2)(b) to get back the keys to his vehicle.

Outside § 87(2)(b) the officers and § 87(2)(b) encountered § 87(2)(b) and he ran inside the apartment building. PO Haber, PO Elmaadawy, and PO Owens chased after § 87(2)(b) to the § 87(2)(b) apartment. PO Haber kicked open and damaged the § 87(2)(b) apartment door (**Allegation A – Abuse of Authority – § 87(2)(g)**). PO Haber, PO Elmaadawy, and PO Owens entered the § 87(2)(b) apartment and searched the apartment for § 87(2)(b) (**Allegations B to G – Abuse of Authority – § 87(2)(g)**). PO Elmaadawy kicked open and broke the lock of a door inside the § 87(2)(b) apartment (**Allegation H – Abuse of Authority – § 87(2)(g)**). PO Haber, PO Elmaadawy, and PO Owens did not find § 87(2)(b) inside the apartment.

PO Haber, PO Elmaadawy, and PO Owens requested back up and at least twenty-seven additional officers, from the 71st Precinct and eleven additional commands, responded to the location. Sergeant Charles Arnone, of the Field Intelligence Team, and Lieutenant Daniel Guida of the 61st Precinct Detective Squad, were among the officers who responded to the location. Sgt. Arnone supervised the entry and search of the § 87(2)(b) apartment of § 87(2)(b) (**Allegations I and J – Abuse of Authority – § 87(2)(g)**). PO Haber seized § 87(2)(b) cell phone inside the § 87(2)(b) apartment (**Allegation K – Abuse of Authority – § 87(2)(g)**). Lt. Guida supervised the entry into § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) in Brooklyn (**Allegations L to P – Abuse of Authority – § 87(2)(g)**). Lt. Guida supervised the search of § 87(2)(b) in Brooklyn (**Allegation Q – Abuse of Authority – § 87(2)(g)**).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) was arrested in regards to ammunition found inside the § 87(2)(b) apartment and was released from the stationhouse with a summons.

The CCRB received thirty-one Body Worn Camera (BWC) videos of this incident (BR 6 and 26).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer MICHAEL HABER damaged an individual's property.

Allegation (B) Abuse of Authority: Police Officer MICHAEL HABER entered § 87(2)(b) in Brooklyn.

Allegation (C) Abuse of Authority: Police Officer ADAM ELMAADAWY entered § 87(2)(b) in Brooklyn.

Allegation (D) Abuse of Authority: Police Officer THOMAS OWENS entered § 87(2)(b) in Brooklyn.

Allegation (E) Abuse of Authority: Police Officer MICHAEL HABER searched § 87(2)(b) in Brooklyn.

Allegation (F) Abuse of Authority: Police Officer ADAM ELMAADAWY searched § 87(2)(b).

§ 87(2)(b) in Brooklyn.

Allegation (G) Abuse of Authority: Police Officer THOMAS OWENS searched § 87(2)(b) in Brooklyn.

Allegation (H) Abuse of Authority: Police Officer ADAM ELMAADAWY damaged an individual's property.

Although § 87(2)(b) did not allege the following, BWC captures PO Haber damaging the door of the § 87(2)(b) apartment, officers entering and searching it, and PO Elmaadawy breaking a door inside the apartment.

It is undisputed that on February 19, 2021, at approximately 3:48 PM, § 87(2)(b) parked his vehicle in front of Camille's restaurant located at 711 Flatbush Avenue and left the keys inside the vehicle while he unloaded items into the restaurant. When he came out of the restaurant, his vehicle was stolen, and he called 911. PO Haber (BR 02), PO Elmaadawy (BR 03), and PO Owens (BR 04) responded to the location and spoke to § 87(2)(b). He told the officers that he spoke to witnesses in the area who told him that § 87(2)(b) stole his vehicle. § 87(2)(b) told the officers that he was familiar with § 87(2)(b) and his mother, § 87(2)(b) and knew that they lived one block away at § 87(2)(b) but he did not specify which floor they lived on. Additionally, PO Haber, PO Elmaadawy, and PO Owens did not know which floor § 87(2)(b) lived on. While the officers began to prepare a complaint report (BR 05) for the stolen vehicle, § 87(2)(b) received a call from § 87(2)(b) who told him that § 87(2)(b) stole his vehicle and wanted to return it to him. She told § 87(2)(b) to meet § 87(2)(b) at § 87(2)(b) where he would return the car keys and tell § 87(2)(b) where he left the vehicle. PO Haber, PO Elmaadawy, and PO Owens told § 87(2)(b) that they would walk to § 87(2)(b) for § 87(2)(b) to get back the keys to his vehicle and they would arrest § 87(2)(b) for stealing his vehicle.

§ 87(2)(b) is an apartment building with a door at street level, a flight of stairs leading to the § 87(2)(b) with a single apartment, and a second flight of stairs leading to the § 87(2)(b) with a single apartment. § 87(2)(b) lives in the § 87(2)(b) apartment.

PO Haber (BR 02), PO Elmaadawy (BR 03), and PO Owens (BR 04) stated that they were familiar with § 87(2)(b) prior to this incident because he was a suspect and had open complaints against him for a string of vehicle thefts which occurred at that location. The officers knew what § 87(2)(b) looked like because they conducted multiple searches prior to the incident date and saw his arrest photo and multiple BWC videos from prior arrests.

PO Haber, PO Elmaadawy, and PO Owens provided consistent accounts regarding what happened after they arrived at § 87(2)(b) with § 87(2)(b). They stated that they went to § 87(2)(b) to place § 87(2)(b) under arrest for stealing § 87(2)(b) vehicle. § 87(2)(b) entered the apartment building at the ground floor and met with § 87(2)(b). PO Haber, PO Elmaadawy, and PO Owens entered behind § 87(2)(b) and witnessed § 87(2)(b) hand § 87(2)(b) a set of car keys. When § 87(2)(b) saw the officers, he immediately started running up the stairs away from the officers. PO Haber, PO Elmaadawy, and PO Owens ran up the stairs after him while yelling for him to stop because he was going to be placed under arrest. PO Owens was the first to reach the top of the stairs, but stopped to let PO Haber and PO Elmaadawy pass. While on the first flight of stairs, they saw § 87(2)(b) running up the second flight of stairs to the § 87(2)(b). All three officers continued their pursuit but briefly lost sight of § 87(2)(b) before reaching the § 87(2)(b). Once they reached the § 87(2)(b) they did not see § 87(2)(b) but saw only one door. PO Haber stated that he kicked the door breaking the door jamb and causing the door to swing to open. The officers entered the apartment and searched every room inside of it. PO Haber, PO Owens, and PO Elmaadawy all stated that they entered and searched the § 87(2)(b) apartment because they were in hot pursuit of § 87(2)(b) who they were going to place under arrest for committing a felony and for safety reasons because they did not know if § 87(2)(b) illegally entered a stranger's apartment. During the search, PO Elmaadawy observed a locked door to a bedroom and kicked it

open and broke its lock. PO Elmaadawy stated that he did so to gain access to the room and search for § 87(2)(b). The officers did not find anyone, including § 87(2)(b) inside of the apartment. The officers exited the apartment and requested back up to the scene.

BWC footage is consistent with the statements provided above. From 0:00 to 3:00 of PO Haber's BWC (BR 28), § 87(2)(b) informs PO Haber and PO Elmaadawy that he left his car keys inside his vehicle, walked away, and when he returned his vehicle was gone. § 87(2)(b) says witnesses said that § 87(2)(b) stole his vehicle, and he knows where he lives. At 3:00, § 87(2)(b) walks the officers over to § 87(2)(b) and tells them that he lives there. At 4:00, the officers tell § 87(2)(b) that they will take a report. From 0:00 to 1:01 of PO Haber's BWC (BR 29), § 87(2)(b) receives a call from § 87(2)(b) and places it on speaker in front of the officers. § 87(2)(b) tells him to go to § 87(2)(b) and ring the bottom bell to retrieve his car keys from § 87(2)(b). From 0:37 to 0:46 of PO Owens' BWC (BR 30), PO Owens is the first to enter § 87(2)(b). At 0:40, a shirtless male (identified via the investigation as § 87(2)(b)) runs up the stairs and PO Owens chases him. At 0:46, PO Owens stops at the top of the stairs and let PO Haber and PO Elmaadawy pass. § 87(2)(b) no longer appears in PO Owens' BWC after the top of the stairs from the first floor to § 87(2)(b). § 87(2)(b) is not captured on either PO Haber or PO Elmaadawy's BWC. At 00:47 of PO Haber's BWC (BR 31), PO Haber is the first to run past PO Owens at the top of the first flight of stairs. At 00:54, PO Haber arrives on the § 87(2)(b) and immediately kicks the door at the top of the stairs. At 00:56, PO Haber kicks the door open. Between 1:00 and 3:55, PO Haber, PO Owens, and PO Elmaadawy enter the apartment, search every room inside, and exit it. At 2:25 of PO Elmaadawy's BWC (BR 32), PO Elmaadawy kicks open a door a locked door which leads into a bedroom.

The complaint report (BR 05), prepared after this incident, is consistent with the above-mentioned statements.

As per people People v. Hunter, 92 A.D.3d 1277 (2012) (BR 11) (citing United States v. Santana, 427 U.S. 38, 43 (1976), United States v. Watson, 423 U.S. 411 (1976), and People v. Leván, 476 N.Y.S.2d 101 (1984)), under the doctrine of hot pursuit, a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. However, the claim of hot pursuit is unconvincing when there is no immediate or continuous pursuit of a suspect from the scene of a crime.

As per People v. Glia, 226 A.D.2d 66 (1996) (BR 07), if it is necessary to follow a suspect into a dwelling to effect an arrest, that the police officer may employ appropriate force to enter the premises in order to consummate that arrest. Additionally, while the arresting officer is generally obliged to inform the suspect of his authority and purpose, the statutory requirement is rendered impractical by flight.

Police officers may damage property only if doing so is reasonably necessary to carry out their duties, Onderdonk v. State 648 N.Y.S.2d 214 (1996) (BR 27).

Based on PO Haber's, PO Elmaadawy's, and PO Owens' conversation with § 87(2)(b) them witnessing the phone call between § 87(2)(b) and § 87(2)(b) and them observing § 87(2)(b) handing over his car keys to § 87(2)(b) the officers had probable cause to arrest § 87(2)(b) for stealing § 87(2)(b) vehicle. BWC corroborates the officers' accounts that they encountered § 87(2)(b) inside the building hallway (a public area) and § 87(2)(b) immediately fled from them. Although the BWC footage does not clearly show whether the officers initiated the arrest, based on the lack of a disputed account of the incident, along with the established probable cause and the officers witnessing § 87(2)(b) handing over the car keys, the investigation credits the officers' testimonies that they entered the building in order to place § 87(2)(b) under arrest. The investigation also credits that it was clear to § 87(2)(b) that he was about to be arrested, which led to § 87(2)(b) to flee. It is unclear if the officers told § 87(2)(b) that he was under arrest, however, as per People v. Glia because § 87(2)(b) fled from the officers immediately upon seeing them, it was

impractical for the officers to inform him that he was under arrest.

Although BWC does not clearly show § 87(2)(b) entering the § 87(2)(b) apartment, the investigation credits that the officers reasonably believed that he entered § 87(2)(b) apartment because they were in close pursuit of § 87(2)(b) and did not see or hear him enter the § 87(2)(b) apartment. As per People v. Hunter, the officers were in hot pursuit and were justified in entering the § 87(2)(b) apartment to arrest § 87(2)(b). Additionally, as per People v. Gila and Onderdonk v. State, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (I) Abuse of Authority: Sergeant CHARLES ARNONE entered § 87(2)(b) in Brooklyn.

Allegation (J) Abuse of Authority: Sergeant CHARLES ARNONE searched § 87(2)(b) in Brooklyn.

Allegation (K) Abuse of Authority: Police Officer MICHAEL HABER seized § 87(2)(b) property.

§ 87(2)(b) (BR 01) stated that on February 19, 2021, he was at home at § 87(2)(b). He only remembered that § 87(2)(b) was at home with him. In the afternoon, he put his cell phone on his bed and left his home. At a later time in the day, he came home and was told by § 87(2)(b) that officers came to his home, entered the apartment, took his cell phone off his bed and left.

PO Haber (BR 02), PO Owens (BR 03), and PO Elmaadawy (BR 04) stated that after they searched the § 87(2)(b) apartment they requested back up and shortly afterwards, officers, including Sgt. Arnone (BR 08), arrived at the location. PO Haber, PO Elmaadawy, and PO Owens stated that because they could not find § 87(2)(b) in the § 87(2)(b) apartment, they believed he must have somehow entered the § 87(2)(b) apartment. Additionally, at a certain point it was determined that § 87(2)(b) lived in the § 87(2)(b) apartment. PO Owens stated that he conducted searches on his phone and found that § 87(2)(b) lived on the § 87(2)(b) but he did not recall specifically what searches were conducted or if they were conducted prior to or during the incident. PO Haber stated that an unknown officer from the FIO team told him that they believed that § 87(2)(b) lived on the § 87(2)(b) of the building, but PO Haber did not know how they knew this information. PO Elmaadawy stated that they believed § 87(2)(b) was in the § 87(2)(b) apartment because § 87(2)(b) was not on the § 87(2)(b). Once Sgt. Arnone arrived at the location, they told Sgt. Arnone that they already searched the § 87(2)(b) apartment and did not find § 87(2)(b) and believed that he was inside the § 87(2)(b) apartment. Sgt. Arnone knocked on the § 87(2)(b) apartment door and § 87(2)(b) opened it. Sgt. Arnone told § 87(2)(b) that the officers were going to enter the apartment to search for § 87(2)(b) for a safety check. The officers entered the apartment and conducted a search for § 87(2)(b). At a certain point in the § 87(2)(b) apartment, PO Haber found § 87(2)(b) cell phone on his bed and vouchered it. Either § 87(2)(b) or § 87(2)(b) told PO Haber that the phone belonged to § 87(2)(b). The officers did not find § 87(2)(b) inside of the apartment. § 87(2)(b) and another unknown elderly female were the only residents present inside of the apartment.

PO Haber, PO Elmaadawy, and PO Owens all stated that they received consent to enter from someone who lived in the § 87(2)(b) apartment.

PO Haber (BR 02) stated at some point, an officer called § 87(2)(b) mother § 87(2)(b) and she provided consent for the officers to enter and search the apartment. The officers then knocked on the § 87(2)(b) apartment door and § 87(2)(b) brother § 87(2)(b) answered the door. The officers asked him if § 87(2)(b) was in the apartment, and

he said no. PO Haber did not recall if the brother provided consent to enter the apartment.

PO Elmaadawy (BR 03) stated that Sgt. Arnone spoke to an individual (identified via the investigation as § 87(2)(b) at the door, but he did not remember what he said. However, § 87(2)(b) provided consent for the officers to enter the apartment. PO Elmaadawy stated that he did not hear what was said between the officers and § 87(2)(b) at the door. At some point after, PO Haber informed PO Elmaadawy that an officer called § 87(2)(b) and obtained consent to search the apartment. PO Elmaadawy did not remember who called her, how her phone number was obtained, or what the conversation with her involved.

PO Owens (BR 04) stated that Sgt. Arnone knocked on the § 87(2)(b) apartment door, § 87(2)(b) answered, and officers spoke with him. PO Owens did not remember which officers or what the conversation was about. However, PO Owens stated that § 87(2)(b) provided consent for the officers to enter the apartment and opened the door. PO Owens did not remember specifically how § 87(2)(b) brother provided consent or what he said.

Sgt. Arnone (BR 08) stated that when he arrived, he saw the § 87(2)(b) apartment door partially opened and believed that officers told him that they had already been inside the second-floor apartment and could not find § 87(2)(b). Sgt. Arnone did not know if consent was requested or obtained to enter the apartment but believed that because they were looking for § 87(2)(b) who committed a felony shortly prior, a warrant or consent was not necessary to enter the apartment. The purpose of entering the apartment was to conduct a safety check for § 87(2)(b).

PO Haber (BR 02) stated that he vouchered (BR 09) § 87(2)(b) cell phone for investigative purposes so that the officers could obtain a search warrant for the phone and to see if it had evidence of § 87(2)(b) stealing § 87(2)(b) vehicle. PO Haber said that he vouchered the phone either because it was on his bed, or because someone in the apartment told the officers that it was his phone.

From 4:10 to 18:20 of PO Owens' BWC (BR 30), PO Owens, PO Haber, and PO Elmaadawy exit the § 87(2)(b) apartment and walk down the stairs to the § 87(2)(b) apartment. PO Owens stands by the § 87(2)(b) apartment door for approximately 14 minutes while waiting for back up to arrive. At 7:20, PO Owens says, "His apartment § 87(2)(b) I think. We don't know which one is § 87(2)(b)." This is the first time that there is any mention of § 87(2)(b) address in any of the BWC footage. The officers never announced themselves or speak to anyone at the door before Sgt. Arnone arrives at 18:06. At 18:12, PO Owens tell Sgt. Arnone that they searched the § 87(2)(b) apartment but found out that he lives in the § 87(2)(b) apartment. Sgt. Arnone asks how sure the officers are that § 87(2)(b) lives in the § 87(2)(b) apartment. At 18:19, PO Haber appears points behind him, and says, "We went into that apartment, he's not in there." It is unclear from his gesture whether he was pointing to the § 87(2)(b) or § 87(2)(b) apartment. At 18:34, Sgt. Arnone knocks on the § 87(2)(b) apartment and announces himself as police. Sgt. Arnone then tells § 87(2)(b) to open the door and he does so. PO Owen's BWC shows that no one ever provided consent for the officers to enter the apartment and there were no conversations regarding consent. BWC footage does not capture any officer conducting a phone search to determine § 87(2)(b) address.

From 1:00 to 1:15 of Det. Trunk's BWC (BR 33), after § 87(2)(b) opens the door, Sgt. Arnone tells § 87(2)(b) that officers chased someone inside the building, and they are conducting a safety check to see if the individual is inside the § 87(2)(b) apartment. Sgt. Arnone and Det. Trunk then steps into the apartment and Sgt. Arnone says that they are going to check the apartment. Between 1:15 and 10:02, multiple officers enter the apartment and conduct a search of the entire apartment. Det. Trunk's BWC does not show anyone providing consent for the officers to enter and search. None of the BWC footage shows PO Haber seizing § 87(2)(b) cell phone.

The CCRB received negative results for a consent search log (BR 10).

As per people People v. Hunter, 92 A.D.3d 1277, (2012) (BR 11) (citing United States v.

Santana, 427 U.S. 38, 43 (1976), United States v. Watson, 423 U.S. 411 (1976), and People v. Levan, 476 N.Y.S.2d 101 (1984)), under the doctrine of hot pursuit, a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. However, the claim of hot pursuit is unconvincing when there is no immediate or continuous pursuit of a suspect from the scene of a crime.

As per Payton V. New York 445 U.S. 573 (1980) (BR 12) searches and seizures inside a home without a warrant are presumptively unreasonable. Absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within.

The factors for exigency include: 1) the gravity or violent nature of the offense with which the subject is to be charged, 2) whether the subject is reasonably believed to be armed, 3) a clear showing of probable cause to believe the suspect committed the crime, 4) strong reason to believe that the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) peaceful circumstances of the entry, People v. McBride, 14 N.Y.3d 440 (2010)(BR 34).

“It is an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate U.S. Const. amend. IV in arriving at the place from which the evidence could be plainly viewed. Two additional conditions must be satisfied to justify the warrantless seizure. First, not only must the item be in plain view, its incriminating character must also be immediately apparent. Second, not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself” Horton v. California, 496 U.S. 128 (1990) (BR 39).

Sgt. Arnone was the highest-ranking officer at the location at the time he initiated entry into the § 87(2)(b) apartment, thus the entries and searches of the other officers were done so under his supervision, therefore Allegations I and J were pled against him.

Based on officer testimony and video evidence, the investigation determined that PO Haber, PO Elmaadawy, or PO Owens had no reason to believe that § 87(2)(b) was inside of the § 87(2)(b) apartment at the time, other than knowing that he lived in the § 87(2)(b) apartment. By their own admission, they believed that § 87(2)(b) fled into the § 87(2)(b) apartment and when they did not find him, they used process of elimination to determine that he may be inside the § 87(2)(b) apartment because it was the only other place in the building that they believed he could have gone and that was his address. Although the officers stated that they knew § 87(2)(b) lived in the § 87(2)(b) apartment, based on inconsistent officer testimony, and the lack of clarifying BWC footage it is unclear how they knew he lived there. At the location, Sgt. Arnone only had information that § 87(2)(b) was not in the § 87(2)(b) apartment. Although PO Haber, PO Owens, and PO Elmaadawy stated that they received consent to enter the § 87(2)(b) apartment, BWC showed that no one gave the officers consent and there were never any conversations regarding consent.

Also, based on the above information Sgt. Arnone received upon arriving at the location, Sgt. Arnone did not have strong reason to believe that § 87(2)(b) was inside the § 87(2)(b) apartment, that § 87(2)(b) was violent or armed, and did not have information that § 87(2)(b) would escape from the apartment. § 87(2)(g)

Furthermore, because the officers had lost sight of § 87(2)(b) for at least 14 minutes and had already searched the § 87(2)(b) apartment, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

As per Payton v. New York, PO Haber should have obtained a warrant for the entry into the § 87(2)(b) apartment as well as a warrant to seize and search § 87(2)(b) cell phone. Pursuant to Horton v. California, a lawful basis to be inside the apartment is an element of a seizure pursuant to the plain view doctrine. § 87(2)(g)

Allegation (L) Abuse of Authority: Lieutenant DANIEL GUIDA entered § 87(2)(b) in Brooklyn.

Allegation (M) Abuse of Authority: Lieutenant DANIEL GUIDA entered § 87(2)(b) in Brooklyn.

Allegation (N) Abuse of Authority: Lieutenant DANIEL GUIDA entered § 87(2)(b) in Brooklyn.

Allegation (O) Abuse of Authority: Lieutenant DANIEL GUIDA entered § 87(2)(b) in Brooklyn.

Allegation (P) Abuse of Authority: Lieutenant DANIEL GUIDA entered § 87(2)(b) in Brooklyn.

Allegation (Q) Abuse of Authority: Lieutenant DANIEL GUIDA searched § 87(2)(b) in Brooklyn.

Although § 87(2)(b) did not allege the following, BWC and officer testimonies shows officers entering the backyard of other residences and entering a construction site.

This incident occurred on February 19, 2021, during which it snowed and there was approximately three inches of snow outside.

It is undisputed that Lt. Guida (BR 14) arrived at the location while officers were conducting a search of the § 87(2)(b) apartment. He was notified of everything that happened before his arrival, but he did not remember who told him that information. Lt. Guida observed an open window at the back of the § 87(2)(b) apartment and saw a single set of footprints leading from the window, and down a fire escape, into the backyards of multiple private houses. Lt. Guida, Sgt. Arnone (BR 08), and PO Haber (BR 02), exited the open window and followed the footprints down the fire escape. Lt. Guida, Sgt. Arnone, and PO Haber followed the footprints through multiple private home backyards: § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b). They followed the set of footprints while climbing over fences which divided the properties. The footprints led to a building alley way that led out to Clarkson Avenue and under scaffolding. The scaffolding was set up around § 87(2)(b) which at the time was a building construction site. Lt. Guida, PO Haber and additional officers entered the construction site and searched all of the floors of the building under construction. At a certain point, ESU was requested to assist in the search of the construction site. It is unknown who requested ESU. ESU arrived shortly afterwards and ordered all officers out of the construction site and searched it themselves. The officers did not find § 87(2)(b) inside the construction site.

Lt. Guida (BR 14) believed that these footprints belonged to § 87(2)(b) because officers followed him into the building and it started from his apartment. Lt. Guida stated that it was “very likely” he went out the window and those were his footprints. Additionally, Lt. Guida stated that at some point § 87(2)(b) mentioned that § 87(2)(b) might have a gun. Lt. Guida stated that he made the decision to follow the footprints through the private property backyards, into the construction site, and to search the construction site. Lt. Guida believed that there was an emergency because he was in hot pursuit of § 87(2)(b) who committed a felony and who was “potentially” armed with a firearm. Lt. Guida stated that the footprints stopped adjacent to a construction site and that was why he decided to enter. From Lt. Guida’s understanding a warrant or consent was not necessary to enter or search the private backyards or the construction site. Lt.

Guida did not know who requested ESU, however he was present when they were requested.

PO Haber (BR 02) stated that they did not know if § 87(2)(b) was in the construction site as there were no distinct footprints leading to it, however the construction site was in the vicinity of the building where the footprints ended.

BWC footage is consistent with the statements provided above. From 3:50 to 4:30 of Det. Trunk's BWC footage (BR 33), § 87(2)(b) tells Det. Trunk that § 87(2)(b) friend went out the window and may have taken a gun with him. At 6:20, Det. Trunk radios over that "The perp possibly has a firearm." From 1:05 to 5:40 of Sgt. Arnone's BWC (BR 35), Sgt. Arnone, Lt. Guida, and PO Haber exit the open window at the back of the apartment and use the fire escape to descend into the backyard of § 87(2)(b). They climb fences into the backyards § 87(2)(b) and eventually they end up at a building alley way. At 18:20, Sgt. Arnone tells Lt. Guida and PO Haber "I'm gonna try getting over, over here" and then climbs over a fence and into the backyard of § 87(2)(b). From 6:15 to 8:50 of PO Haber's BWC (BR 36), PO Haber and Lt. Guida climb over two additional fences into two other building alley ways and then follow a path out to Clarkson Avenue. Between 15:40 and 16:59, PO Haber walks to the construction site at § 87(2)(b) where there are a group of officers including ESU, who are attempting to gain entry into the construction site. PO Haber's BWC shows that there was no snow path nor footprints on the sidewalk of Clarkson Avenue and specifically around the construction site. From 0:00 to 2:33 of PO Scanlon's BWC (BR 37), PO Scanlon and additional officers search inside the construction site. At 0:50, Lt. Guida is seen going up the stairs inside the construction site and searching the floors.

The event (BR 15) and the ESU report (BR 16) are consistent with the statements discussed above.

As per people **People v. Hunter, 92 A.D.3d 1277, (2012)** (BR 11) (citing **United States v. Santana, 427 U.S. 38, 43 (1976)**, **United States v. Watson, 423 U.S. 411 (1976)**, and **People v. Levan, 476 N.Y.S.2d 101 (1984)**), under the doctrine of hot pursuit, a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. However, the claim of hot pursuit is unconvincing when there is no immediate or continuous pursuit of a suspect from the scene of a crime.

As per **Payton v. New York 445 U.S. 573 (1980)** (BR 12) searches and seizures inside a home without a warrant are presumptively unreasonable. There are a few exceptions to entering a premise without a warrant, including consent, exigent circumstances, or emergency situations. The factors for exigency include: 1) the gravity or violent nature of the offense with which the subject is to be charged, 2) whether the subject is reasonably believed to be armed, 3) a clear showing of probable cause to believe the suspect committed the crime, 4) strong reason to believe that the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) peaceful circumstances of the entry, **People v. McBride, 14 N.Y.3d 440 (2010)**(BR 34).

People v. Dallas, 8 N.Y. 3d 890 (2007) (BR 13) established that warrantless entries into private homes are considered unconstitutional. Exceptions to this rule include emergency situations: 1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. 2) The search must not be primarily motivated by intent to arrest and seize evidence. 3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

Lt. Guida was the highest-ranking officer at the location at the time and supervised the entry into multiple private properties as well as the entry and search of the construction site, therefore Allegations L to Q were pled against him.

As per **People v. Lott, 102 A.D.2d 506** (BR 38), when determining if exigent circumstances exist, the gravity of the crime, the suspect's possession of and willingness to use a gun, and the likelihood of his attempting to escape should all be considered. The mere fact that police have information that a suspect is in possession of a firearm does not justify a warrantless

entry.

Although it is unclear whether the owners of the residences were even aware that officers entered their backyard or if the construction site owner was aware that their property, they all still have a reasonable expectation of privacy. When Lt. Guida arrived at the scene, he was made aware that there was an ongoing search for § 87(2)(b). By Lt. Guida's own admission, he believed that it was "very likely" that the footprints from the apartment window leading to multiple backyards belonged to § 87(2)(b) and that there was an "emergency" because he was in hot pursuit of § 87(2)(b) who was potentially armed with a firearm based on § 87(2)(b) statement to the officers.

As noted above, given that the officers lost sight of § 87(2)(b) and had already searched the § 87(2)(b) apartment, § 87(2)(g)

Moreover, although Lt. Guida claimed that there was an emergency because he was searching for a felon who potentially had a firearm, there was no evidence that there was an immediate need for their assistance to protect life or property in any of the backyards he entered nor the construction site. Even if § 87(2)(b) did have a firearm, there was no indication that he was violent or likely to use the firearm. Given Lt. Guida's statement, it is apparent that he entered the backyards and construction site with the intent to arrest § 87(2)(b) and seize the firearm.

§ 87(2)(g)

None of the officers had seen § 87(2)(b) since they lost sight of him in the hallway prior to entering the § 87(2)(b) apartment. The only reliable information the officers had was that § 87(2)(b) stated that § 87(2)(b) was in the apartment prior to the officers entering. It is undisputed that there were footprints leading from the fire escape and into the multiple backyards. However, aside from the footprints, the officers had no information that led them to believe that § 87(2)(b) was in any of the backyards they entered nor were they able to confirm whether it was § 87(2)(b) footprints. § 87(2)(g)

Furthermore, the footprints ended somewhere in the building adjacent to the construction site. There were no signs that § 87(2)(b) entered this construction site. Furthermore, the front door of the construction site was locked, and the officers had to enter through a back entrance.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 23).
- Police Officer Michael Haber has been a member of service for eight years and has been a subject in six CCRB complaints and twelve allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Adam Elmaadawy has been a member of service for seven years and has been a subject in twelve CCRB complaints and twenty-eight allegations, of which three were substantiated.:
 - 202000957 involved a substantiated allegation of sexual misconduct against PO Elmaadawy. The Board recommended charges and the NYPD has not yet imposed discipline.
 - 202006659 involved substantiated allegations of physical force and discourtesy against PO Elmaadawy. The Board recommended charges and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- Police Officer Thomas Owens has been a member of service for six years and has been a subject in eight CCRB complaints and twelve allegations, none of which were substantiated. § 87(2)(g)
- Sergeant Charles Arnone has been a member of service for ten years and has been a subject in ten CCRB complaints and twenty-one allegations, of which two were substantiated.:

